

HOW TO SUE IN THE MITCHELL COUNTY MAGISTRATE COURT

I. WHAT IS THE MAGISTRATE COURT?

The Magistrate Court is a court in Mitchell County that handles money claims for under \$15,000.00. A Magistrate holds an informal hearing, to listen to and decide cases, when the defendant argues the claim. Any person may file a claim in Magistrate Court in his or her own name, without any attorney. (You may have an attorney represent you if you choose, this would be at your own expense. The court does not appoint attorneys for civil cases.) Either a person or a business may be sued. (See "Deciding to Sue".)

Below are examples of typical lawsuits filed in Magistrate Court:

- a) Mr. Smith bought a TV from a local store. The next week the set would not work. The store refused to give him a new set or his money back.
- b) Ms. Jones paid a security deposit when she moved into her apartment. Although she complied with the lease and did not damage the apartment, her landlord will not return the security deposit.
- c) Mr. James was fired from his job. He claims the company owes him one week's pay. The company will not pay him.

II. HOW TO BRING A CASE IN MAGISTRATE COURT:

(1) DECIDING TO SUE

The first step is deciding whether to sue. Remember you must prove that the person or business you are suing owes you something. Do you have some proof of the debt such as a receipt, note, bill of sale, warranty or a witness? In deciding to sue, consider whether you have any evidence.

In addition, if you sue an individual, they must be a resident of Mitchell County. If you sue a corporation the business must be in Mitchell County or the registered agent for the corporation must be located in Mitchell County. Or, if you sue a sole proprietor of a business, the sole proprietor must be a resident of Mitchell County. The Clerk of Court cannot advise you on who to sue or if you have a good suit.

(2) HOW TO FILE

The Magistrate Court Clerk/Deputy Clerk will give you a claim form to fill out. On this form, you will put the name and physical address (we cannot serve a P.O. box) of the person or corporation you are suing. You may represent yourself or act as an agent for your corporation or sue on behalf of a minor should you be the guardian.

However, you cannot represent someone else if you are not an attorney.

In addition, you must put your name and mailing address on the claim form. This is most important because the clerk will use this address to send you notice of the date and time if or when your case is to be heard by the Magistrate. Your case may be dismissed if the court cannot locate you.

In order for the court to pass judgment in your case, you have to sue the correct entity. (Example, person, corporation). The person you sue is called the "defendant". If the defendant owns a business which is not incorporated, and your claim is against the business, you may sue the person and the trade name he or she does business under in the county where the owner resides, regardless of where the business is. (Example, John Doe d/b/a John's Grocery). You can usually find out the exact trade name as it is registered with the Mitchell County Superior Court, Mitchell County Courthouse, Camilla, Georgia. You can personally go to the record room and look this information up for yourself.

If the defendant is a corporation, you must sue the corporation itself, rather than someone who works for the corporation. Remember you must sue a corporation in the county where it is doing business or is incorporated, you may also sue a corporation in the county where the registered agent is located. (Registered agent is the party that should be served for the corporation). If you need to verify if a business is incorporated, and to get the registered agents name and address for the corporation, you need to call the Corporation's Listing Office of the Secretary of State.

(3) WHERE TO FILE

You may personally file or mail the claim form to the Magistrate Court of Mitchell County, located on 22 N. Court Avenue, Camilla, Georgia 31730. Claims against the defendants residing outside the State of Georgia are usually filed in the state where the defendant is located. You should consult an attorney regarding these cases.

(4) FILING FEE

If you are suing someone you must pay a filing fee and service fee. The fee for filing your claim is **\$95.00**. Two party, at different addresses, (2nd) service is an additional **\$50.00**.

(5) NOTIFYING THE DEFENDANT

The Sheriff will serve the defendant a copy of the complaint and summons that you have

thirty (30) days from the date that he/she was served with the complaint in which to answer the complaint. Should he/she fail to answer the complaint within thirty (30) days, law does permit the defendant an additional fifteen (15) days in which he/she can file an answer, **(totaling forty-five (45) days)** this after paying the cost required (each defendant must pay cost) which totals the same cost the plaintiff paid when filing the complaint. If the defendant answers the claim, the clerk will notify both parties, in writing, of the hearing date, place and time of the hearing by certified mail.

(6) CLAIMS BY THE DEFENDANT AGAINST THE PLAINTIFF

The defendant is allowed to make a counter claim against you related to your claim against him. If the defendant makes such a claim, he must state his answer. A copy of his answer/claim will be mailed to you. The Magistrate may set your claim and defendant's claim for the same hearing date or set separate hearing dates. You do not have to answer a counter claim until your court hearing. If the defendant's claim is for more than \$15,000.00 actual damages, the case may be transferred to the State of Superior Court of Mitchell County.

(7) PREPARING FOR THE HEARING

As plaintiff, you must prove the defendant is indebted to you and the amount of damages owed. Although the Magistrate Court is a people's court, it is still required to apply the rules of evidence when proving your case. The court will not accept affidavits or letters considered "hearsay". Estimates of repair bills without the maker of the estimates are not accepted. You must have the maker of any documents in court in order to offer them into evidence. In some cases, you may need to seek the advice of an attorney in order to submit your evidence. The judges or clerks of this court cannot tell you how to try your case, however, the clerk can assist you in preparing your paper work.

While waiting for the hearing you should gather all your documents (receipts, repair bills, warranties, etc.) and have them ready. If you have witnesses you should notify them of your court date. Should a witness refuse to come to court you may have the clerk issue a subpoena for their appearance. To do this you must go to the Clerk of Magistrate Court and tell them the name and address of your witness.

(8) SETTLEMENTS

The legislature requires the court (Judge) to have the parties attempt to negotiate a

settlement one more time before the hearing. If you reach an agreement to settle your case, you will need to put these terms in writing. You do not have to submit those terms to the court unless requested by the court, but if you do not you will need to file a dismissal without prejudice immediately with the Clerk of Court.

If you settle your case and the defendant is willing to pay you on a weekly, biweekly or monthly basis, and this arrangement is acceptable with you, you should ask the clerk for a Consent Judgment Form. This form will enable you to put the terms of the agreement in writing with both parties' signature and the Judge's signature. Should the defendant fail to pay as per the Consent Judgment terms, you would not be required to appear in court to start collections proceeding. Even though you receive a judgment in your favor, whether it is a consent judgment or one rendered in court by the judge, if the defendant does not work, has no money or assets, you may not be able to collect on your judgment. The court cannot force the defendant to pay you the money owed to you. **(See #12 COLLECTING THE JUDGMENT)**

(9) THE HEARING

Hearings are held **Monday through Friday** at the **Mitchell County Magistrate Court Office, 22 N. Court Avenue, Camilla, Georgia.**

It is very important for you to appear on time with all your evidence and witnesses. If you appear late, or if you fail to appear, you may automatically lose your case.

When your case is called, the court will inquire as to the length of time it will take you to present your case and how many witnesses will testify on your behalf. Your testimony is usually essential in proving your case. After the court calls the calendar and determines the length of each case, this will be when you are excused for a few minutes to attempt to negotiate a settlement before the judge hears your case. You should make an earnest attempt in reaching a settlement. You are the one most familiar with your case best, the judge is not. It would be more conducive to reach a settlement of your own, than to have the judge make a decision that is not in your favor.

You have the burden to prove to the court the liability of the defendant and the amount of damages you have claimed. Therefore, you will have the first opportunity to tell the court your side of the case and present evidence or witnesses on your behalf. After each of your witnesses has testified, the defendant may ask the witnesses any questions pertaining to their testimony. After presenting your case, the defendant may then present evidence and testimony to support his case. You may ask the defendant and his witnesses questions relative to their testimony. **Remember** you must ask questions and do not

make statements or be argumentative, even if you do not agree with the testimony? After all the evidence has been presented, the court will consider all the relevant evidence and make a decision. Once the judge has made his decision the clerk will prepare the judgment in writing, the judge will sign the judgment and you will be given a copy of the judgment by certified mail.

(10)DEFAULT

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If the defendant does not answer your complaint within forty-five (45) days from the date of service and your damages are liquidated (example: note, account) you may receive a judgment without appearing in court. If a court hearing was scheduled and the defendant fails to appear, you may then also receive a judgment. In both cases, this is called a judgment by default. When you receive a judgment by default it is usually for the full amount you are asking for plus the amount of the court cost you paid to initiate the action. If your claim is for non-liquidated damages, you will have to prove the amount of damages in court to receive your default judgment (example: auto accident).

(11)APPEAL

Both parties have the right to appeal the decision of the Magistrate. If you think the Magistrate has made the wrong decision, you may appeal to the State or Superior Courts. Appeals must be made within thirty (30) days from the date of the judge's decision. The request to appeal should be in writing with \$206.00 cost payable to the Clerk of Superior Court.

(12)COLLECTING THE JUDGMENT

In many cases, collecting the judgment is harder than proving your case in court. The court does not collect your judgment for you. If you receive a judgment and you are not voluntarily paid, there are several methods of collection the law provides. (This provided that the party is not indigent.)

UPON RECEIVING A JUDGMENT FROM THE COURT, YOU MAY WANT TO:

- (a) Have the court issue a FIFA. for you. The FIFA. (proof of your judgment) once issued, places a lien against the losing party and any property he may

once issued, places a lien against the losing party and any property he may own. The cost for issuing the FIFA, and being recorded in the General Execution Docket is **\$9.00**. You may also take the FIFA, to have it recorded in any county in Georgia. In order to have a FIFA, recorded outside the State of Georgia, you may need to consult an attorney.

- (b) To file a **garnishment**: Garnishments filed against the paycheck are filed in the county where the employer is located.
Garnishments filed against bank accounts are done in the county where the bank is located.
- (c) To levy against real and personal property process is started by having the clerk issue a FIFA, for you. Being that the FIFA is your proof of judgment, the Sheriff will require the FIFA to levy against any personal property. If you

want to levy against real property you should contact an attorney for the procedure.

- (d) You may also elect to turn your judgment over to an attorney for a collection agency for collection.

IMPORTANT THINGS TO REMEMBER

- (1) If you should move after you filed your claim, you should notify the clerk in writing of your new address. You are notified of your court date by certified mail, therefore it is very important for you to pick up your certified mail when notice is given.
- (2) The Magistrate Court was designed for you to represent yourself. This does not mean that you cannot have an attorney represent you.
- (3) Once the clerk has scheduled a hearing date, a continuance is granted by consent of both parties or for legal cause only.
- (4) It is very important that you sue the correct party. If you have any doubts as to who or whom you should sue, you should consult an attorney.
- (5) The clerk cannot advise you on whom to sue. The clerk can help you with the preparation of your complaint only.
- (6) The court cannot force the losing party to pay you once you receive a judgment. You may not be able to collect your judgment.
- (7) Finally, it is important to remember that you have been given basic information for suing in the Magistrate Court. Some cases can require more detailed questions or information that do not require legal advice, the clerk

detailed questions or information that do not require legal advice, the clerk will be happy to assist you. The Clerk can be reach at (229) 336-2077 between the hours of 9:00 am – 5:00 pm Monday through Friday.